

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2079 of 1998

to

FIRST APPEAL No 2087 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 to 5: No

SPECIAL LAND ACQUISITION OFFICER

Versus

LAGHABHAI MANJIBHAI DECD.THRO'HEIRS GOVINDBHAI LAGHABHAI & 1

Appearance:

First Appeals Nos. 2079/98 to 2082/98

Mr. H.L. Jani, AGP, for the State

First Appeals Nos. 2083/98 to 2086/98

Mr.M.R. Raval, AGP, for the State

First Appeal No.2087/98

Miss. B.R. Gajjar,AGP, for the State

Mr.U.H. Amin, for appellant No.2

Mr. G.M. Amin for the respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

Date of decision: 25/01/99

COMMON ORAL JUDGMENT: (Per: Panchal, J.)

1. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated November 27, 1997, rendered by the learned Second Extra Assistant Judge, Nadiad, in Land Acquisition Case No.971 of 1991 to Land Acquisition Case No.979 of 1991, and, as common questions of fact and law are involved in the appeals, we propose to dispose them of by this common judgment.

2. The Executive Engineer, Narmada Project, had proposed to the State Government to acquire the agricultural lands of village Davapura, Taluka Nadiad, District Kheda, for the purpose of Davapura Khumarvad Distributary. On scrutiny of proposal, the State Government was satisfied that the agricultural lands of village Davapura were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the official gazette on December 28, 1988. The land owners were served with notices under Section 4 of the Act and they had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands, which were specified in the notification issued under Section 4(1) of the Act, were needed for the public purpose of Davapura Khumarvad Distributary. Therefore, declaration under Section 6 of the Act was made which was also published in the official gazette on October 5, 1989. Interested persons were, thereafter, served with notices under Section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.250/- per Are by award dated December 19, 1990. The claimants were dissatisfied with the offer and they did not accept the award. They filed applications under Section 18 of the Act and required the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Kheda, at Nadiad, which were numbered as Land Acquisition

Case No.971 of 1991 to Land Acquisition Case No.979 of 1991.

3. In the reference applications, it was pleaded by the claimants that having regard to the market value of the adjacent lands and fertility of the lands acquired, they were entitled to compensation at the rate of Rs.2500/- per Are. The reference applications were contested by the present appellants vide written statement Exh.18. In the reply, it was averred that compensation awarded by the Special Land Acquisition Officer was just and proper in view of the fertility of the lands, crops raised thereon, as well as the income therefrom, and, therefore, the reference applications should be dismissed. In view of the rival assertions made by the parties, necessary issues for determination were framed by the Reference Court. On behalf of the claimants, witness Karsanbhai Mavjibhai Patel was examined at Exh.15 before the Reference Court. It may be stated that he was one of the claimants and his land was also acquired by declaration made under Section 6 of the Act. He deposed that village Arandiapura was adjacent to village Davapura and Panchayat of both the villages was common. He asserted before the Reference Court that the development in both the villages was same and fertility of the lands of both the villages was also the same. He further deposed that village Bilodara was adjoining his village, He produced previous award rendered by the Reference Court with respect to agricultural lands of village Arandiapura in Land Acquisition Case No.299 of 1989 at Exh.16, as well as previous award of the Reference Court rendered in respect of agricultural land of village Bilodra in Land Acquisition Reference No.231/89 at Exh.17. The witness further produced copy of the judgment at Exh.18 delivered by the High Court in First Appeal No.2397 of 1993 by which the award rendered by the Reference Court with reference to lands of village Bilodra was confirmed by the High Court. The learned Government Pleader appearing for the appellants produced before the Reference Court earlier award in respect of agricultural lands of village Kesara at Exh.26. On consideration of evidence led by the parties, the Reference Court held that the previous award relating to the lands of village Kesara was neither comparable nor relevant for the purpose of ascertaining the market value of the lands acquired in the present case. The Reference court deduced that earlier awards passed in respect of lands of village Arandiapura and village Bilodra were not only comparable but also relevant for the purpose of ascertaining the market value of the lands acquired in the present case. It was noticed by the Reference Court

that village Arandiapura was on cross roads and the express way was passing through the said village whereas village Davapura was situated in the interior and was less developed in comparison to village Arandiapura. The Reference Court was, therefore, of the opinion that appropriate deduction was required to be made from the price of the agricultural lands of village Arandiapura, as indicated in Exh.16, and, accordingly, held that 50% deduction should be made from the price of lands of village Arandiapura for the purpose of ascertaining the market value of the lands of village Davapura. The Reference Court therefore came to the conclusion that market value of the lands of village Davapura would have been Rs.1250/- per Are in the year 1986. It was noticed that in the case of village Arandiapura, notification under Section 4(1) of the Act was published in the official gazette on July 21, 1986 whereas in the present case the notification under Section 4(1) of the Act was published on December 28, 1988 and, therefore, the Reference Court was of the opinion that the claimants were entitled to increase in price of lands at the rate of 8% per annum. In the ultimate decision, the Reference Court held that the claimants were entitled to compensation at the rate of Rs.1500 per Are by common award dated November 27,1997, which has given rise to the present appeals.

4. The learned Assistant Government Pleaders appearing for the appellants submitted that the earlier awards rendered in respect of agricultural lands of village Arandiapura and village Bilodra were not relevant at all for the purpose of ascertaining the market value of the lands acquired in the present case and, therefore, the impugned award deserves to be set aside. It was pleaded that the previous award produced by the Government at Exh.26 in respect of lands of village Kesara was relevant and, therefore, the market value of the acquired lands ought to have been determined on the basis of the said award. What was stressed was that there was no evidence indicating rise in price of lands and, therefore, the Reference Court was not justified in granting rise in price of lands at the rate of 8% per annum.

5. Mr. G.M. Amin, learned counsel for the claimants, contended that no oral evidence was led on behalf of the appellants to establish the fact that fertility of the lands of village Kesara and village Davapura was the same, nor any evidence was adduced to indicate that village Kesara was proximate to the lands

acquired and, therefore, the Reference Court was justified in not placing reliance on the previous award rendered by the Reference Court in respect of agricultural lands of village Kesara. It was claimed that there is common gram panchayat for village Arandiapura as well as village Davapura and, therefore, in view of the positive evidence led by the claimants, the Reference Court was justified in placing reliance on the award rendered in respect of lands of village Arandiapura for the purpose of ascertaining the market value of the lands acquired in the present case. It was also submitted that village Bilodra was adjoining village Davapura and, as the award rendered by the Reference Court has become final between the parties, compensation determined by the Reference Court cannot be said to be excessive in any manner so as to warrant interference of the Court in the present appeals.

6. Mr. G.H.Amin, learned counsel appearing for the Acquiring body, has submitted that the common award passed by the Reference court is not based on cogent evidence led by the claimants and, therefore, the appeals should be allowed.

7. We have been taken through the relevant evidence by the learned counsel for the parties. So far as the earlier award rendered by the Reference Court in respect of lands of village Kesara is concerned, we notice that no oral evidence was adduced on behalf of the appellants to establish before the Reference Court that fertility of the lands of village Kesara was the same, as that of the village Davapura. Even it was not brought to the notice of the Court that village Kesara was adjoining village Davapura. Exh.26 which is earlier award in respect of lands of village Kesara would indicate that village Kesara is in Mehmadabad Taluka, whereas village Davapura is in Nadiad Taluka. In view of paucity of evidence, it cannot be said that any error was committed by the Reference Court in not placing reliance on Exh.26 for the purpose of ascertaining the market value of the lands acquired of village Davapura. So far as earlier award of the Reference Court with respect to the lands of village Arandiapura is concerned, claimant, Karsanbhai Mavjibhai Patel, deposed before the Court that there was common panchayat for village Arandiapura and village Davapura. This statement made on oath by one of the claimants was not controverted by the present appellants. The witness also deposed that fertility of lands of both the villages was same. This assertion was also not controverted by the present appellants. The witness further deposed that village Bilodra was adjoining his village. The previous

award rendered by the Reference Court in respect of lands of village Arandiapura would indicate that the lands of village Arandiapura, Taluka Nadiad, were acquired for the purpose of construction of Ahmedabad-Vadodara Express Way and notification under Section 4(1) of the Act was published in the official gazette on July 21, 1986. There, the Reference court had determined the market value of the lands of village Arandiapura at the rate of Rs.2500/- per Are. Exh.17, which is previous award of the Reference Court in respect of lands of village Bilodra, shows that the lands of village Bilodra were acquired for the purpose of construction of Ahmedabad-Vadodara Express Way and notification under Section 4(1) of the Act was published in the government gazette on October 15, 1986. There, the Reference Court, having regard to the evidence on record, had determined the market value of the lands at the rate of Rs.2500/per Are. Exh.18 is judgment of the High Court rendered in First Appeal (St.) No.2397 of 1993, which shows that the award of the Reference court in respect of lands of village Bilodra was confirmed by the High Court. It is well settled that earlier award of the Reference Court or the High Court in respect of similar or adjacent lands and which has become final between the parties can be taken into consideration for the purpose of ascertaining the market value of the lands acquired subsequently. The awards rendered by the Reference Court in respect of the lands of village Arandiapura and village Bilodra have become final and it is not brought to the notice of the Court that those awards have been modified in any manner by the higher forum. As noted earlier, the claimants have led positive evidence to establish that the lands of village Davapura had same advantages as were available to the lands of villages Arandiapura and Bilodra. No evidence was led by the appellants to indicate that lands of village Davapura were inferior in any manner in quality to the lands of village Arandiapura or village Bilodra or that the lands of village Davapura had certain disadvantages because of certain relevant factors. Under the circumstance, it cannot be said that any error was committed by the Reference Court in placing reliance on earlier awards made in respect of the lands of village Arandiapura and village Bilodra. Further, it was noticed by the Reference Court that village Davapura was situated in interior and was less developed in comparison to village Arandiapura. Under the circumstance, the Reference Court had rightly deducted 50% from the value of the lands of village Arandiapura in order to ascertain the correct market value of the lands of Davapura. In case of village Arandiapura, notification under Section 4(1) of the Act was published on July 21, 1986, whereas,

in the present case, notification under Section 4(1) of the Act was published on December 28, 1988 and, therefore, the Reference Court was justified in considering rise in price of lands while ascertaining the correct market value of the lands acquired. It is reasonable to presume that price of lands would increase with passage of time, and, having regard to the facts of the case, it cannot be said that the Reference court has committed any error in considering the rise in price of lands at the rate of 8% per annum. On over all view of the matter, we are satisfied that a just and reasonable award has been passed determining the market value of the lands acquired, and no ground is made out by the appellants to interfere with the same. Under the circumstance, the appeals cannot be allowed and are liable to be dismissed.

8. For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(swamy)